

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NATASHA MARKS, <i>et al.</i> ,)	Case Nos.: 1:17 CV 1541
)	1:18 CV 400
Plaintiffs)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
XCEL HEALTHCARE PROVIDERS,)	
INC., <i>et al.</i> ,)	
)	
Defendants)	
)	
and)	
)	
TIHARA NORRIS,)	
)	
Plaintiff)	
)	
v.)	
)	
XCEL HEATHCARE PROVIDERS,)	
)	
Defendant)	<u>ORDER OF DISMISSAL AND</u>
)	<u>APPROVING SETTLEMENT</u>

This matter is before the court on the Parties’ Joint Motion for Approval of Settlement and Stipulation of Dismissal with Prejudice (“Joint Motion”) pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) (ECF No. 28) and the Joint Supplement to Joint Motion (ECF No. 29), which made one ministerial change to the Settlement Agreement relating to the

disbursement of costs between Plaintiff's counsel, contains all the necessary signatures and the schedule of payments. The Joint Motion asks the court to approve, as fair and reasonable, the proposed Settlement reached by the Parties and memorialized in the Joint Stipulation of Settlement and Release ("Settlement" or "Agreement") attached to the Joint Motion as Exhibit A.

Having reviewed the Joint Motion, the Agreement, and its Exhibits, the Declaration of Ryan A. Winters, and the pleadings and papers on file in these Actions, and for good cause established therein, the court hereby enters this Stipulated Order of Dismissal and Approving Settlement, the Agreement and its Exhibits, the proposed Notice, the proposed Consent and Release Form, the proposed allocation and calculation of Individual Payments, and the proposed attorneys' fees and expense reimbursements to counsel for the FLSA Collective, as follows:

1. The captioned actions assert wage-and-hour claims under the FLSA, 29 U.S.C. §§ 201-219, on behalf of home health aides of Defendant Xcel Healthcare Providers Inc. who are alleged to have not paid overtime compensation at the rate of one and one-half their regular rate of pay for all hours they worked over 40 each workweek during the calculation period set forth in the Parties' Agreement.

2. On July 21, 2017, Plaintiff Natosha Marks filed Case No. 1:17-cv-1541 against Defendants, and alleged that Defendants failed to pay their home health aides, including Plaintiff, overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they worked over 40 each workweek, in violation of the FLSA, 29 U.S.C. 201-219, as well as a "class action" pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the Ohio

Minimum Fair Wage Standards Act (“OMFWSA”), R.C. 4111.03. On September 19, 2017, Plaintiff Marks amended her Complaint to add Plaintiff Lisa Harris. Hereinafter, this matter shall be referred to as “*Marks*.”

3. On February 20, 2018, Plaintiff Tihara Norris initiated this “collective action” against Xcel Healthcare Providers Inc., as a result of Defendant’s alleged practices and policies of not paying its home health aides, including Plaintiff, overtime compensation at the rate of one and one-half times their regular rates of pay for the hours they worked over 40 each workweek, in violation of the FLSA, 29 U.S.C. 201-219, as well as a “class action” pursuant to Federal Rule of Civil Procedure 23 to remedy alleged violations of the OMFWSA, R.C. 4111.03. Hereinafter, this matter shall be referred to as “*Norris*.”

4. The Parties reached the proposed settlement in this matter after extensive research, legal debates, discussions, and correspondence, and after good faith bargaining and with the assistance of a Mediator Proposal from the Honorable Peggy Foley Jones.

5. The Settlement will cover Representative Plaintiffs and all of the Eligible Settlement Participants identified in Appendix 1 of the Settlement who elect to participate in the Settlement by signing and returning Consent and Release Forms (“Class Members”).

6. To receive an Individual Payment, the Eligible Settlement Participants must sign and return the Consent and Release Form attached as Exhibit B to the Parties’ Joint Motion for Approval

of Settlement. The Eligible Settlement Participants may return Consent and Release Forms to Class Counsel within thirty (30) days after the mailing of the notice. The Consent and Release Forms must be signed electronically (eSigned) via PDF, postmarked, faxed or emailed to Class Counsel within the thirty (30) day period to be timely.

7. The Settlement Agreement provides that, in consideration of the Total Eligible Settlement Payment, the claims of the Representative Plaintiffs and Eligible Settlement Participants who elect to participate in the Settlement by signing and returning Consent and Release Forms are to be dismissed with prejudice.

8. The court finds that the proposed Settlement is fair and reasonable and satisfies the standard for approval under § 16(b) of the FLSA, 29 U.S.C. § 216(b). The court finds that the Settlement resulted from arms-length negotiations between experienced counsel after substantial investigation. Class Counsel has informed the court that they believe the Settlement is fair, reasonable, and adequate and in the best interests of the Representative Plaintiffs and Eligible Settlement Participants. The court has considered all relevant factors, including the risk, complexity, expense, and likely duration of the litigation; the extent of investigation; the amount offered in the Settlement; and the experience and views of counsel for the Parties.

9. The court approves the Agreement and its Exhibits, including the proposed Notice and the proposed Consent Form, and orders that the Settlement be implemented according

to the terms and conditions of the Agreement and as directed herein. The court grants final approval of the Settlement as to the Representative Plaintiffs and all Eligible Settlement Participants who elect to participate in the Settlement by signing and returning a Consent and Release Form.

10. The court finds that the proposed allocation and calculation of the Individual Payments to Class Members are fair and reasonable. The court approves the method of calculation and proposed distribution of the Individual Payments. The Parties have submitted with the Joint Stipulation of Settlement and Release an Appendix providing the names of the Representative Plaintiffs and the Eligible Settlement Participants, and the Individual Payments for the Class Members. The Court approves the amounts and orders that such payments be distributed in the manner, and subject to the terms and conditions, set forth in the Agreement.

11. The court approves the payment of attorneys' fees and expense reimbursements to Class Counsel as provided in the Agreement, and orders that such payments be distributed in the manner, and subject to the terms and conditions, set forth in the Settlement Agreement.

12. The court dismisses the claims of the Representative Plaintiffs and Eligible Settlement Participants who sign and return Consent and Release Forms with prejudice, and enters final judgment dismissing them from the Action. The court finds there is no just reason for delay and directs the Clerk of the Court to enter this Stipulated Order of Dismissal and Approving Settlement immediately.

The court retains jurisdiction over this action to enforce the terms of the Settlement, including the Notice.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

June 5, 2018